

14 CV 4665
(AMENDED)UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**FRANK GILLIARD 14-A-5535#4488692-K**

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

THE CITY OF NEW YORK**AND****OFFICER JAVISH ORTIZ: Shield#006576****at the 40th Precinct located at
257 Alexander Ave.**

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name **FRANK GILLIARD**
ID # **14-A-5535#4488692-K**
Current Institution **COXSACKIE CORR FACILITY**
Address **COXSACKIE CORR FACILITY P.O BOX-999**
COXSACKIE NEW YORK 12051-0999

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name **THE CITY OF NEW YORK** Shield # _____
Where Currently Employed _____
Address _____USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#DATE FILED: **5/14/15****COMPLAINT**

under the

Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)Jury Trial: ☐ Yes ☐ No
(check one)RECEIVED
SDNY PRO SE OFFICE
2015 APR 29 P 1:36

Defendant No. 2 Name OFFICER JAVISH ORTIZ Shield # 006576
Where Currently Employed 40th Precinct
Address Located at 257 Alexander Avenue at
03:00 pm to 11:00 pm

Defendant No. 3 Name _____ Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 4 Name _____ Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 5 Name _____ Shield # _____
Where Currently Employed _____
Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur?
On 138 Street and Willis Avenue located in the area of
the 40th Precinct.

B. Where in the institution did the events giving rise to your claim(s) occur?
40th Precinct located at 257 Alexander Avenue.

C. What date and approximate time did the events giving rise to your claim(s) occur?
During the 03:00 pm on May 21, 2013 to June 3, 2013.

Facts. The claim arose on or about May 21, 2013 at approximately

03: p.m in front of 225 Willis Avenue in the County of the Bronx when claimant was falsely arrested, falsely imprisoned, and misidentified by several officers from PSA 7, located at 737 Melrose Ave. Claimant was transported from PSA 7 to the 40th Precinct located at 257 Alexander Ave, where his arrest processed by officer Javish Ortiz Shield No.006576. And then take to Fort Apache at 1086 Simpson Street for a line-up. The Officers stopped and arrested claimant without probable cause. Claimant was unlawfully detained and subject to an illegal line-up Claimant was subject to unlawful search and seizure. And I was charged with (1) Robbery 2, DQO P.L 160.10 (2) Robbery 2DQO P.L 160.10 (2)(a), (3) Robbery 3DQO P.L.160.05, (4) Grand Larceny 4DQO P.L.155.30 (5), (5) Assault 3DQO, P.L.120.00(1), (6) Petit Larceny DQO P.L.155.25, (7) Criminal Possession of Stolen Property 5DQO P.L.165.40 (8) Harassment 2, P.L 24026 (1). All charges were ultimately dismissed and cleared by the Grand Jury on June 3, 2013.

Was anyone else involved?

Who else saw what happened?

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

Claim for physical, emotional, mental, and psychological pain and suffering, embarrassment and humiliation sustained by claimant as a result of intentional, reckless and/or negligent conduct by agents, servants and employees of The City of New York. The claimant was falsely arrested and imprisoned and subjected to illegal search and seizure, malicious prosecution, violations of his right to due process, retaliation for protected First Amendment activity, and his civil rights were violated. U.S. Const. Amend. I, IV & XIV, N.Y. Const. Art. 1, 12.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ___ No xx

Facts. TO CASE LAW

My position is that pursuant to Civil Right Law section 79-c any injury to my person or effects is punishable in the same manner if I was not so confined.

Unlawful confinement is specie of False imprisonment and unlawful imprisonment, and wrongful confinement.

The damages I sustained both at Attica Correctional Facility and Southport for the wrongful confinement.

Compensatory damages is sought for wrongful confinement and the privileges lost as a result.

I rely upon Sanabria v. State, 29 Misc2d 527(2010). for 91 days of wrongful imprisonment, and Sanabria received \$20,000.00 in Past Noneconomic Damages. in DePaula v. State, 82 A.D. 3d 827 (2d Dept, 2011) a damage award of \$250.00 where confinement was for no more than 20 minutes of wrongful confinement. In Jian Ren Chen v. City of New York, 18 Misc3d 161 Sup 2007) nominal damages of \$400,00 (3 hours wrongful confinement. Martin v. City of Albany, 51 A.D.2d 596 (3d Dept. 1976) 1 day confinement \$5,000.00 on the Federal level, in Tatlor v. Clement, 433 F.Supp. 588 (S.D.N.Y. 1977) \$25,00 per day was not considered excessive, taking into consideration that of inflation.

Because this issue occurred at to separate Correctional Facility Attica (initially), Southport, (subsequently) which is secured housing unit where personal property, programs, visits, commissary packages, etc. are extremely limited or not at all.

Respectfully Your



Frank Gilliard 14-A-5535

April 23, 2015

DATE

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ____ No ____ Do Not Know ____

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ____ No ____ Do Not Know ____

If YES, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ____ No ____

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ____ No ____

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

1. Which claim(s) in this complaint did you grieve?

2. What was the result, if any?

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

Not a grievable issue.

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any:

- G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). Pain and Suffering, Mental Anguish

Loss of Social Security income, Slander and Defamation of my
name and because of the time I spent in prison for a crime I
did not commit for (TWO WEEKS) me and my family had to suffering.
I asked the Court for a Justified Compensation. Because all
chaeges were ultimately dismissed and cleared by the Grand Jury
on June 3, 2013.

On
these
claims

VI. Previous lawsuits:

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ____ No **xx**

B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

On
other
claims

C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes ____ No **xx**

D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____
If NO, give the approximate date of disposition _____
7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

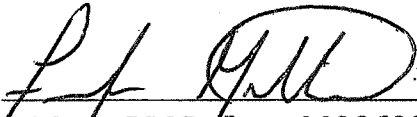
I declare under penalty of perjury that the foregoing is true and correct.

Signed this 23 day of April, 2015.

Signature of Plaintiff

Inmate Number

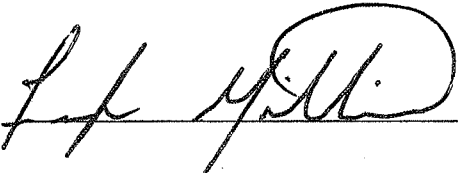
Institution Address

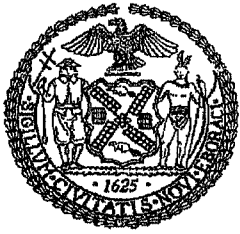

14-A-5535 #No. 4488692-K
Coxsackie Corr Facility
P.O Box-999
Coxsackie New York 12051

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 23 day of April, 2015, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:





THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER
1 CENTRE STREET, NEW YORK, N.Y. 10007-2341

Scott M. Stringer
COMPTROLLER

00A - 216

Date: 06/03/2014

FRANK GILLIARD
90 AMSTERDAM AV APT 2B
NEW YORK, NY 10023

Re.: Claim # 2013PD017001
Claimant: FRANK GILLIARD
Occur Date: 06/03/2013
Filed Date: 06/27/2013

Dear FRANK GILLIARD

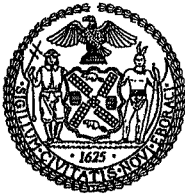
This is in reference to your claim for damages, which is still under investigation.

We wish to advise you, however, that if your claim is not resolved and you wish to pursue your claim against the City, you may bring a suit against the City if it is started **within one year and ninety days from the date of occurrence**, as per Section 50-I of the General Municipal Law. This notice is being sent to advise you that the one year and ninety day period is approaching.

Very truly yours,

YVONNE ROMAN
Bureau of Law and Adjustment

PROPERTY DAMAGE DIVISION
(212) 669-8750



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
CLAIMS AND ADJUDICATIONS
1 CENTRE STREET ROOM 1200
NEW YORK, N.Y. 10007-2341

WWW.COMPTROLLER.NYC.GOV

Michael Aaronson
Chief, Bureau of Law and
Adjustment

015 - 151

Scott M. Stringer
COMPTROLLER

Date: 07/03/2014
Claim No: 2014PI021085
RE: Acknowledgment of Claim

FRANK GILLARD 2411306678 1AA
1 HALLECK ST
BRONX, NY 10474

Dear Claimant:

We acknowledge receipt of your claim, which has been assigned the claim number shown above. Please refer to this claim number in any correspondence or inquiry you may have with our office.

We will do our best to investigate and, if possible, settle your claim. However, if we are unable to resolve your claim, **any lawsuit against the City must be started within one year and ninety days from the date of the occurrence.**

If you have any questions regarding your claim, you may contact us at either 212-669-8750 for property damage claims or 212-669-4445 for claims involving personal injury.

Sincerely,
Michael Aaronson

NOTICE OF CLAIM

-----X
In the Matter of the Claim of

FRANK GILLIARD

-against-

THE CITY OF NEW YORK.
-----X

TO: Comptroller of the City of New York

PLEASE TAKE NOTICE that the undersigned claimant hereby makes claim and demand against you as follows:

1. The name and post office address of claimant:

Claimant:

FRANK GILLIARD

Address: 90 Amsterdam Avenue apt. 2B NY, NY 10023

Claimant's Phone number: 212-977-8114

Claimant's Date of Birth: 06/24/1963

2. The nature of the claim:

Claim for physical, emotional, mental, and psychological pain and suffering, embarrassment and humiliation sustained by claimant as a result of intentional, reckless and/or negligent conduct by agents, servants and employees of the City of New York. The claimant was falsely arrested and imprisoned and subjected to illegal search and seizure, malicious prosecution, violations of his right to due process, retaliation for protected First Amendment activity, and his civil rights were violated. U.S. Const. Amend. I, IV & XIV; N.Y. Const. Art. 1, § 12.

Further, Claimant was wrongly and maliciously held in police custody despite the fact that Claimant was falsely arrested. During the time Claimant was held in police custody he was

neglected by NYPD and/or its agents. Claimant was made to suffer physical injury and emotional injury sustained directly as a result of his false arrest by NYPD.

Claimant also alleges negligence in hiring and retention of incompetent and unfit New York City Police Department employees, and negligence in the training and instruction of such employees. All of the above as a consequence of the conduct of agents and employees of the City of New York and the New York City Police Department

3. The time when, the place where, and the manner in which, the claim arose:

The claim arose on or about May 21st, 2013 at approximately 03:00 p.m. in front of 225 Willis Avenue, in the County of the Bronx when claimant was falsely arrested, falsely imprisoned, and misidentified by several officers from PSA 7, located at 737 Melrose Avenue. Claimant was transported from PSA 7 to the 40th Precinct located at 257 Alexander Ave, where his arrest processed by PO Javish Ortiz (Shield# 006576) and then taken to Fort Apache at 1086 Simpson Street for a line-up. The officers stopped and arrested claimant without probable cause. Claimant was unlawfully detained and subject to an illegal line-up. Claimant was subject to unlawful search and seizure.

Claimant claims malicious prosecution for being required to attend court on May 24th, 2013 May 31st, 2013 and June 3rd, 2013. Claimant was charged with (1) Robbery 2nd DQO P.L. 160.10(1), (2) Robbery 2nd DQO P.L. 160.10 (2)(a), (3) Robbery 3rd DQO P.L. 160.05, (4) Grand Larceny 4th DQO P.L. 155.30 (5), (5) Assault 3rd DQO, P.L. 120.00 (1), (6) Petit Larceny DQO, P.L. 155.25, (7) Criminal Possession of Stolen Property 5th DQO, P.L. 165.40, (8) Harassment 2nd, P.L. 24026 (1).

All charges were ultimately dismissed and cleared by the Grand Jury on June 3rd, 2013.

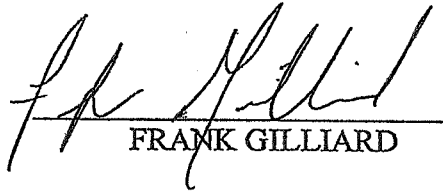
4. The items of damage or injuries claimed are:

Claimant sustained injuries to his emotional and physical wellbeing, the extent of which are as yet not fully determined. Claimant claims damages to his personal property, damages for pain and suffering and punitive damages, and diverse general and special damages, the exact extent of which have not as yet been fully determined, and damages under 42 U.S.C. § 1983.

The claim and demand is hereby presented for adjustment and payment.

PLEASE TAKE FURTHER NOTICE that by reason of the foregoing demand, unless it is adjusted and paid within the time provided by law from the date of the presentation to you, the claimant intends to commence an action on the claim to recover his damages with interests and costs.

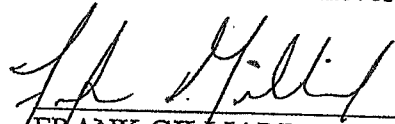
Dated: JUNE 26, 2013


FRANK GILLIARD

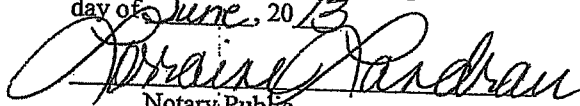
Prepared by pro bono counsel

VERIFICATION

FRANK GILLIARD, being duly sworn, states that he is the claimant in this action and that the foregoing Notice of Claim is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.


FRANK GILLIARD

Sworn to before me this 26
day of June, 20 13


Notary Public

LORRAINE LANDRAU
Notary Public State of New York
No. 01LA6166674
Qualified in Bronx County
Commission Expires May 21, 2015

Prepared by pro bono counsel

-----X

In the Matter of the Claim of

FRANK GILLIARD

AFFIDAVIT OF SERVICE

-against-

THE CITY OF NEW YORK.

-----X

Rafaela Uribe, being duly sworn, states:

1. I am over eighteen years old and am not a party to this proceeding.
2. I served a copy of the foregoing NOTICE OF CLAIM by certified mail on JUNE 27,

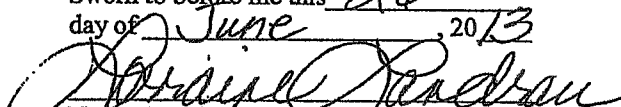
2013 upon:

Office of the Comptroller
City of New York
1 Centre Street, Room 1220
New York, N.Y. 10007

Dated: JUNE 26, 2013
Bronx, New York


Rafaela Uribe

Sworn to before me this 26
day of June, 2013


Notary Public

LORRAINE LANDRAU
Notary Public State of New York
No. 01LA6166674
Qualified In Bronx County
Commission Expires May 21, 2015

Prepared by pro bono counsel

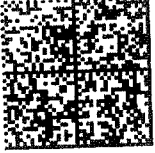
FRANK GILLIARD 14-A-5535 No. 4488692-K
COXSACKIE CORRECTIONAL FACILITY
P.O. BOX-999
COXSACKIE NEW YORK 12051-0999

COXSACKIE



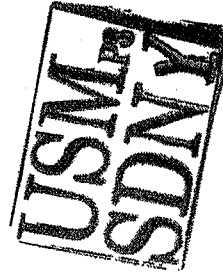
CORRECTIONAL FACILITY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET
NEW YORK NEW YORK 10007



LEGAL MAIL

